

radio tuned to the Pomona translator's frequency, which audio was being fed into the transmitter. Turro and I then drove to the Pomona facility, where I found essentially the same equipment (with the car radio tuned to WXTM's frequency) and high-quality filters which were installed to receive a better signal quality from the Monticello station.

I then returned to my office and reduced my observations to an e-mail which was directed to both the Wireless Telecommunications and Mass Media Bureau personnel, a copy of which is disclosed herein. There are no other written records of this investigation.³

June 4, 1997: The signals of both the Ft. Lee and Pomona translator stations were monitored at the telephonic request of Stephen Barone and/or Alan Aronowitz of the Mass Media Bureau, who asked me to monitor those signals if I was in the area. On June 4, 1997, again employing a signal generator set to the frequency of the station being tested and monitoring the output, I was able to determine that the Pomona station was receiving the signal of the WJUX, and that the Ft. Lee translator station was receiving the signal of the Pomona translator station. I monitored the Ft. Lee station from atop the roof of the building where the transmitting equipment is located (access gained by building personnel after identifying myself as an FCC field engineer), and the Pomona station from the street adjacent to the property where that equipment is located. I did not physically inspect either translator facility at this time. I took no notes during this monitoring and I reported my findings by telephone to

³ The July 31 and August 2, 1995, inspections were taken at the request and for the benefit of the Wireless Telecommunications Bureau with regard to Inter-City Relay Station WMG-499. I have no personal knowledge whether the results of those inspections were used by the Mass Media Bureau in the preparation of the HDO in this proceeding.

either Barone or Aronowitz.

Interrogatory 32: See interrogatory 31.

Interrogatory 33: See interrogatory 31.

Interrogatory 34: See interrogatory 31.

Interrogatory 34: See interrogatory 31.

Interrogatory 35: See interrogatory 31.

Interrogatory 36: See interrogatory 31.

Interrogatory 37: See interrogatory 31.

Interrogatory 38: See interrogatory 31.

Interrogatory 39: See interrogatory 31.

Interrogatory 40: See interrogatory 31.

Interrogatory 41: See interrogatory 31.

Interrogatory 42: I am not aware of any other staff member of the FCC with personal knowledge of any investigation or testing related to the Proceeding. Information relating to any knowledge that is not first-hand is irrelevant to this proceeding.

Interrogatory 43: All communications, either oral or written, between myself and any other members of the FCC's staff are described and identified in interrogatory 31. I had no communications, either written or oral, with Universal Broadcasting of New York, Inc. and/or any of its employees or representatives.

Interrogatory 44: See interrogatory 31.

Interrogatory 45: The audio quality of the Ft. Lee translator appeared to have sufficient immediacy to preclude its passage through several additional electronic stages.

Simple aural evaluation was used to reach this conclusion.

Interrogatory 46: Based on my listening to the signals in both April and July of 1995, the quality of the signal that I listened to in July was much better than the signal I listened to in April. The noise level of the July signal was noticeably reduced, and had greater immediacy in audio quality than that of the April signal I listened to.

Interrogatory 47: (a) A list of equipment at each translator was not made.

(b) Not applicable.

(c) I asked Turro to demonstrate off-air reception of the Pomona translator by the Ft. Lee translator. Turro demonstrated reception of the Pomona translator by the Ft. Lee translator by momentarily deactivating the receiver and observing a loss of audio at the output.

(d) I did not ask Turro to demonstrate reception of the Monticello station by the Ft. Lee translator while at the Ft. Lee translator that day. Turro offered to so demonstrate and purported to do so by listening to the Monticello signal on a receiver and antenna independent of the translator. We both observed that the resulting signal was of poor audio quality (*i.e.*, sound that has numerous and recognizable discontinuities, and is quite objectionable to listen to). Turro then stated that he intended to further improve reception of the Monticello signal by the Ft. Lee translator by adding additional equipment (such as a new antenna), implying to me that this was a work in progress.

(e) I do not specifically recall Turro making such a demonstration.

(f) Both locations had cavity-type filters.

Interrogatory 48: Sound that has recognizable discontinuities, but is not objectionable to listen to.

Interrogatory 49: Sound that has very few recognizable discontinuities, and is certainly not objectionable.

Interrogatory 50: Sound that has recognizable discontinuities, and may be objectionable to listen to.

Interrogatory 51: (a) The Ft. Lee translator had sound with sideband splatter (*i.e.*, the noise heard when tuned away from the center of an FM signal) from WBAI, which would occur if a receiver was tuned to 99.7 MHz, the Pomona translator.

(b) Similar sound as that from the Ft. Lee translator, but with more immediacy.

(c) Operating power was not specifically measured.

(d) A list of equipment was not made.

(e) See interrogatory 31.

Interrogatory 52: (a) Monitoring occurred while driving to the Ft. Lee translator from Manhattan, and in the parking lot of the apartment building in which the translator equipment is installed.

(b) See interrogatory 49.

(c) Signals were transmitted by a Hewlett-Packard signal generator with random length wire, unknown power level.

(d) Top of the stairs leading to the roof.

(e) Random length wire.

(f) Essentially vertical with some horizontal component.

Interrogatory 53: No.

Interrogatory 54: See interrogatory 31.

Interrogatory 55: I did not obtain written statements from Luna or Gaghan.

Interrogatory 56: See interrogatory 55.

Interrogatory 57: I had no communications with representatives or employees of Universal Broadcasting of New York, Inc.

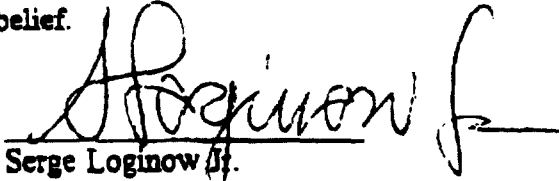
Interrogatory 58: I have not obtained statements, either written or oral, from potential witnesses other than those described in interrogatory 31.⁴

Interrogatory 59: I do not recall expressing that particular view. I do recall that during the ride in which Turro and I were in Turro's car, Turro asked me how the inspections were going. I responded to the effect that everything that I inspected that day seemed OK, but that, ultimately, all matters would be resolved by personnel in Washington. I did state to Turro that an unauthorized transfer or a relinquishment of control of a broadcast station is considered to be a very serious offense by the Commission.

Interrogatory 60: See interrogatory 31.

Interrogatory 61: The document speaks for itself. I have no personal knowledge concerning the preparation of the HDO.

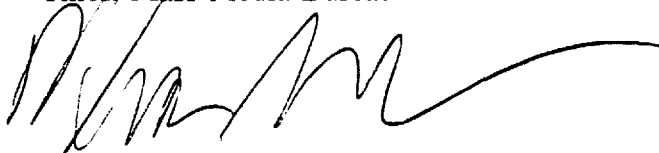
I, Serge Loginow, Jr., hereby swear under penalty of perjury that the foregoing answers are true and correct to the best of my knowledge and belief.


Serge Loginow Jr.

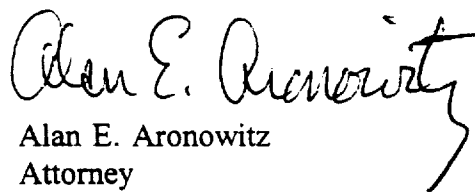
⁴ Consistent with footnote 1, *supra*, Mr. Loginow cannot answer the interrogatory for other members of the Commission's staff. However, statements obtained by the Mass Media Bureau have been disclosed to the parties.

Respectfully submitted,

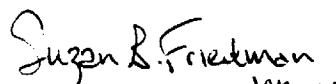
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints & Political
Enforcement Division
Mass Media Bureau



Alan E. Aronowitz
Attorney
Mass Media Bureau



Suzan B. Friedman ^{by JEA}
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Federal Communications Commission
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August 20, 1997

000340

ATTACHMENT

000341

From: Serge Loginow
To: SLINN,SBARONE
Date: 8/1/95 12:09pm
Subject: Gerald Turro Update

Gerald Turro Update

On site monitoring in area of Jukebox Radio studio in Dumont NJ on July 31, 1995. The STL (WMG499) was not observed to be in operation on 951.00 MHz, or any frequency near 951.00 MHz.

The audio quality of the Fort Lee NJ translator signal, however, indicated that the input signal was NOT off air from the Pomona NY translator on 94.3 MHz as licensee Gerald Turro claims, but rather from alternate means, presumably via telephone lines. (The audio quality of Fort Lee via off air means had been observed during April 1995 when WXTM Monticello NY and Jukebox Radio was inspected.)

000342

From: Serge Loginow Jr
To: fobmail:oadal5:PCUNIX:CAD:CONV:B4.B4:SBARONE
Date: 8/4/95 9:46am
Subject: Gerald Turro Update # 2

On site monitoring in area of the Fort Lee NJ translator on August 2, 1995. The audio quality appeared to be very high. It was particularly free of sideband splatter from adjacent FM stations as was observed previously. Telephoned Turro and asked for an inspection of the Fort Lee translator. He replied no problem, he can be there in about twenty minutes. Turro arrived and demonstrated off air reception of the Pomona NY translator (94.3 MHz) by deactivating the receiver and observing the loss of audio output from the translator. He then offered to make a similar demonstration at the Pomona NY translator with the engineer. Turro and Loginow went to Pomona NY. The output of the translator there was deactivated and again the Fort Lee translator was observed to lose audio output. Turro had installed additional filters at Pomona to greatly improve the reception of WJUX Monticello NY.

It appears that Turro is now able to provide a consistent high quality audio signal off air from the Pomona NY translator at the Fort Lee NJ location.

Furthermore, while at Fort Lee, Turro demonstrated the ability to receive moderately good audio directly from WJUX Monticello (99.7 MHz). Again, he was using filters similar to those he installed at Pomona NY. Turro said he plans to fine tune the equipment to further improve the Monticello signal quality and then permanently connect it as part of the translator station.

Serge

000043

CERTIFICATE OF SERVICE

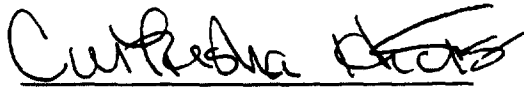
CurTrisha Hicks, a secretary in the Enforcement Division, Mass Media Bureau, certifies that she has on this 20th day of August 1997, sent by U.S. mail, U.S. Government frank, copies of the foregoing "Answers of Serge Loginow, Jr. and the Mass Media Bureau to Interrogatories of Gerard A. Turro" to:

Administrative Law Judge Arthur I. Steinberg
Federal Communications Commission
2000 L Street, N.W., Suite 228
Washington, D.C. 20554

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CurTrisha Hicks

000344



Federal Communications Commission
Washington, D.C. 20554

September 9, 1997

Charles R. Naftalin, Esquire
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: MM Docket No. 97-122

Dear Mr. Naftalin:

This is to follow-up our conversation at the Pre-Hearing Conference on September 3, 1997, and is intended to clarify the matters raised in the Motion to Compel Answers of Serge Loginow, Jr., you filed on behalf of Gerard A. Turro on September 2, 1997.

There is no disparity between the Bureau's and Loginow's responses to interrogatories concerning allegations relating to the Pomona translator. Whereas the Bureau has consistently stated that the *HDO* speaks for itself, Loginow's response to propounded Interrogatory 5 accurately observes that nowhere in the *HDO* is it stated explicitly that the Commission has any evidence that Inter-City Relay Station WMG-499 was specifically used in conjunction with the Pomona translator. Loginow's response further indicates that he made no observations or conclusions regarding the use of Station WMG-499 with the Pomona translator. Thus, pursuant to your request, and in order to clarify the matter for the record, the Bureau presently "has no evidence in its possession that the Pomona translator (W232AL) violated [sic] Section 74.531 of the Commission's Rules."

In the motion, you express concern that there is considerable confusion in the record regarding the inspections conducted in connection with this proceeding. Please be advised that all such inspections, including those beyond the scope of the propounded interrogatories, have been disclosed. The Bureau's June 6 and 23, 1997, interrogatory answers disclosed the inspections of April and May, 1995, as those conducted in connection with this proceeding. In order to further clarify that statement, those were the only inspections conducted at the request of the Mass Media Bureau in connection with this proceeding. You later informed undersigned Bureau Counsel of two additional inspections conducted in July and August, 1995. Upon learning of that fact, undersigned counsel promptly determined and disclosed Loginow's activities of July and August, 1995, made at the request of the Wireless Telecommunications Bureau, in connection with the ordered termination of Station WMG-499. Those activities were not undertaken in connection with this proceeding. All matters related to Loginow's activities during 1995 have been fully disclosed. Finally in this regard,

Loginow's activities on June 4, 1997, did not involve the "inspection" of any facility related to this proceeding, but rather a monitoring of signals. Moreover, inasmuch as that monitoring occurred after the release of the *HDO*, the monitoring was not part of this proceeding and the results of that monitoring were not a factor in the issuance of the *HDO*.

The Bureau and Loginow have previously indicated that Loginow had no communications, either written or oral, with Universal Broadcasting of New York, Inc. ("Universal") or its employees, and that he did not obtain the August 9 and 10, 1995, statements of Vincent Luna and William Gaghan. You now assert that those statements conflict with a statement contained in the July 8, 1997, response to Turro's request for documents under the Freedom of Information Act ("FOIA"). That response, signed by Roy J. Stewart, Chief, Mass Media Bureau, states that the materials disclosed " . . . include: (a) statements from two former employees of Mr. Turro *that were given to Serge Loginow, Jr., the investigating engineer;*" (emphasis added). The FOIA letter is not accurate. Because the Luna and Gaghan statements were executed *after* Loginow's April and May inspections of WJUX, the translators, and Jukebox Radio's Dumont studios, he could not have relied upon them at the time of those inspections. Moreover, both Luna and Gaghan have described the circumstances surrounding their execution of those statements, which were provided to the Bureau by counsel for Universal after they were executed. Thus, and for the record, please be advised that Loginow did not obtain the Luna and Gaghan statements, nor were such statements provided to him in connection with his inspections.

As to the other statements referred to in the motion, please be advised that: the staff of the Complaints and Political Programming Branch ("Branch") received Hopper's statement anonymously after the *HDO* was released; the Branch solicited Epstein's statement after the *HDO* was released; the Branch solicited Epstein's statement earlier in the discovery process and Bureau Counsel has stated that he does not intend to use the statement at hearing; and those statements were not relied upon in the preparation of the *HDO* and are not expected to be used at the hearing.¹

With respect to the interrogatories concerning Commission personnel with personal knowledge of matters raised in Turro's interrogatories, both the Bureau and Loginow have consistently maintained that Loginow is the only Commission employee with personal knowledge of the matters set forth in the *HDO*. That is true. Neither the engineering study

¹ A significant portion of Hopper's statement, unknown to the Bureau during the preparation of the *HDO*, concerns the operation of noncommercial station WRRH(FM), formerly WJUX(FM), Franklin Lakes, New Jersey. During the course of discovery, the Bureau learned of additional information relating to the Franklin Lakes station. However, further inquiry into the Franklin Lakes station has been deemed beyond the scope of this proceeding. See *Memorandum Opinion and Order*, FCC 97M-121, released July 11, 1997. Accordingly, the Bureau does not presently intend to make use of the Hopper statement. However, should any of the matters concerning the Franklin Lakes station be subsequently viewed as relevant to the issues or the credibility of the witnesses in this proceeding, Hopper's statement may be relied upon the Bureau at hearing.

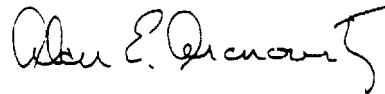
that was attached to Universal's complaint, nor the vertical terrain profile forwarded to the Branch staff by Universal on September 23, 1996, are based on Bureau Counsel's knowledge. The existence of those engineering materials has been previously disclosed and they have been made available to the parties.

Insofar as you speculate that Norman Goldstein, Chief, Complaints and Political Programming Branch may have had additional information or knowledge when he requested that the Commission's Compliance and Information Bureau ("CIB") conduct the investigations in this proceeding, the Bureau has previously disclosed the actual request for inspections directed to CIB and the information that accompanied it. Nowhere does that request suggest that Goldstein had additional knowledge or formed additional conclusions regarding the operation of the subject stations -- in fact, it is clear from that request that no initial conclusions were formed and that the request was anything more than a routine request to gather information. (In this regard, we note that until Goldstein requested more information by way of ~~the~~ CIB inspections, there was no way to determine whether *or not* the complaint had any basis or whether operation of these stations complied with Commission rules and policies.) Thus, we can only agree with your statement that "... Goldstein initiated investigations into Mr. Turro's translators operations well before the disclosed investigations or statements were made available to him." As a general rule, the Commission attempts to analyze information brought to its attention prior to assessing whether to go forward on a complaint. That was done in this case when Goldstein requested that CIB conduct the inspection of WJUX and the translators. However, the decision to issue the *HDO* was based not only on Universal's complaint and Loginow's inspections, but also the Luna and Gaghan statements, Turro's and MMBI's responses to the letters of inquiry, and the staff's conclusions based thereon. Finally, the matters contained in the vertical terrain profile referenced in the motion were neither confirmed independently by the Bureau, nor relied upon in Loginow's inspections or in the Bureau's preparation of the *HDO*.

In addition, Universal has reported that it made various inquiries regarding the status of its complaint. Those inquiries were made by both counsel for and principals of Universal. In response to your specific inquiry, undersigned counsel has been advised that principals of Universal (believed to be Howard, Miriam, and Abe Warshaw, in the company of attorney Roy Russo) met with Stephen Barone, a Branch employee, and Richard Waysdorf, a former Branch employee, sometime after the filing of the complaint to inquire about its status. Undersigned counsel did not attend and was unaware of this meeting, and Barone recalls that no substantive discussions beyond the filing of the complaint were conducted at this meeting. In addition, Goldstein briefly attended the meeting only to assure Universal's representatives that the matter was being looked into by the staff. Goldstein has no independent recollection of that meeting.

I am hopeful that this fully responds to your concerns. Please feel free to contact me should you have further questions on these or other matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan E. Aronowitz". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Alan E. Aronowitz
Attorney
Mass Media Bureau

cc: The Honorable Arthur Steinberg
James P. Riley, Esquire
Richard A. Helmick, Esquire

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re:

GERARD A. TURRO

For Renewal of License
for FM Translator Stations
W276AQ(FM), Fort Lee, NJ, and
W232AL(FM), Pomona, NY

MONTICELLO MOUNTAINTOP
BROADCASTING, INC.

Order to Show Cause Why the Construction
Permit for FM Radio Station WJUX(FM),
Monticello, NY, Should Not Be Revoked

MM Docket No. 97-122

File Nos. BRFT-970129YC
BRFT-970129YD

To: Mass Media Bureau, for Serge Loginow, Jr.

**FIRST SET OF INTERROGATORIES OF
MONTICELLO MOUNTAINTOP BROADCASTING, INC.
TO MASS MEDIA BUREAU,
FOR ANSWER BY SERGE LOGINOW, JR.**

James P. Riley
J. Todd Metcalf
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August 8, 1997

000349